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Secretary of State

Pre-Need Cemetery and Funeral Merchandise

§ 75-63-5. Cemeteries not required to accept property or perform services contrary to law.

Nothing contained in this chapter shall be construed to require any cemetery to accept any personal property, or perform any personal services contrary to law or ordinances pertaining to the burial of deceased human beings, or contrary to rules and regulations of a cemetery pertaining to the quality and kind of personal property that may be used in connection with the burial of deceased human beings in any such cemetery.

§ 75-63-25. Certain preneed cemetery and funeral contracts overrule conflicting wishes of next of kin; preneed contract providers have right to rely on contract and perform obligations in accordance with contract.

(1) Any pre-need contract which is executed by the decedent for his own arrangements and is fully funded overrules, following the decedent's death, the conflicting wishes of the decedent's next of kin, unless a compelling public interest makes it impossible to comply with a decedent's directions in a pre-need contract.

(2) The provisions of this section shall not prevent the decedent's next of kin or surviving heirs at law from, at their own expense, pursuing reasonable services and making reasonable arrangements that do not conflict with the decedent's directions in a pre-need contract.

(3) All contract providers shall have the right to rely on the pre-need contract and perform obligations in accordance with the pre-need contract. There shall be no liability for any contract provider who in good faith performs his obligations pursuant to the pre-need contract, provided the pre-need contract is in compliance with Section 75-63-51 et seq. and any rules promulgated thereunder.

Article 3. Pre-Need Cemetery and Funeral Registration

§ 75-63-51. Short title

This article shall be known and may be cited as the "Pre-need Cemetery and Funeral Registration Act."

§ 75-63-53. Definitions

As used in this article, unless the context requires otherwise:

- (a) “Buyer” means the person who purchases the preneed contract.
- (b) “Cash advance item” means any item of service or merchandise described to a purchaser as a “cash advance,” “accommodation,” “cash disbursement” or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.
- (c) “Cemetery” means an organization as defined in Section 41-43-33.
- (d) “Contract insured” or “contract owner” means the person upon whose death will initiate the performance of a preneed contract.
- (e) “Contract provider” means the funeral home, cemetery or other providers of merchandise and/or service in a preneed contract that will be responsible for performing a preneed contract.
- (f) “Crematory” means an organization as defined in Section 73-11-41.
- (g) “Financial institution” means a bank, trust company, savings bank, or savings and loan association chartered or authorized to do business in this state.
- (h) “Funeral home” means a business licensed under Section 73-11-55.
- (i) “Inflation proof contract” means a preneed contract that establishes a fixed price for funeral services and merchandise without regard to future price increases.
- (j) “Insurance” means a life insurance policy, an annuity policy or a Class A or Class B burial insurance policy.
- (k) “Merchandise” means personal property associated with the disposal of or memorializing a deceased human being, including, but not limited to, a casket, burial vault, burial clothes, urn or monument.
- (l) “Preneed contract” means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of but shall not mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

(m) “Preneed contract for caskets” means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

(n) “Seller” means the person who sells a preneed contract.

(o) “Services” means services of any nature in connection with the final disposition of a dead human body.

(p) “Standard contract” means a preneed contract that applies the trust funds or insurance proceeds to the purchase price of specific funeral services and specific merchandise at the time of death of the contract insured without a guarantee against future price increases.

(q) “Substitute provider” means any funeral home, cemetery, or other provider of merchandise and/or services who furnishes final needs to a beneficiary of a preneed contract sold by another provider regardless of whether the substitute provider honors the terms and conditions of the original preneed contract.

(r) “Trust” means an express trust created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named preneed contract insured.

(s) “Trustee” or “trust officer” means an original, added or successor trustee including its successor by merger or consolidation.

(t) “Trust documents” means documents, including, but not limited to, preneed contracts, receipts, contract owner's death certificate, proof of death, the trust agreement, and any and all correspondence between the trustee or trust institution and the contract provider or contract insured.

§ 75-63-55. Pre-need contracts to be evidenced in writing on forms approved by and on file with Secretary of State; contracts in violation of article and chapter; contents of written preneed contract, contract to be funded by trust or insurance.

(1) No person, firm, partnership, association or corporation may directly or indirectly, or through an agent, engage in the sale of preneed contracts or preneed contracts for caskets except as authorized under this article. Any person, establishment or company required to register under Section 73-11-67 that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of this article that are applicable to preneed contracts. All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form may be used without prior approval of the Secretary of State. No amendment or modification can be made to any preneed contract without prior approval of the Secretary of State. The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of the chapter and subject to the penalties provided in Section 75-63-69. The contract shall clearly

indicate the names and addresses of the buyer, contract insured, contract provider and seller. The Secretary of State may by rule or regulation prescribe specific contract content or a standard contract form required for use by all contract providers describing the rights and responsibilities of the contract provider and the contract owner. However, no standard form contract or contract language shall be inconsistent in any way with the provisions of this article. The Secretary of State is further authorized to implement a systematic method to identify and track preneed contract sales for the purpose of reconciling sales reported to the Secretary of State on the annual report required by Section 75-63-67 with trust fund activity statements and the provider's business records.

(2) The contract shall clearly indicate all merchandise covered by the contract, a description of the merchandise quality, and the total cost of all merchandise covered by the contract. The contract shall list all services covered by the contract and the total cost for all services covered by the contract. The contract shall list all cash advance items covered by the contract and the total cost for all cash advance items covered by the contract.

(3) All preneed contracts sold shall be funded by trust or insurance as defined in this article or evidenced by a warehouse receipt, as contemplated in Uniform Commercial Code-Documents of Title, Section 75-7-101 et seq. All merchandise placed on a warehouse receipt or placed in storage shall be reported to the Secretary of State in the preneed report as required by Section 75-63-67.

(4) If the preneed contract is funded by a policy of insurance, as defined by Section 83-5-5, a copy of the insurance policy shall be furnished to the insured within fifteen (15) days of issue. Such insurance shall be subject to the insurance laws of the state.

The insured shall be furnished the following:

(a) A list of the merchandise, including a description of the merchandise quality, and services which are applied or contracted for in the preneed contract and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(b) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the preneed contract; and

(c) Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the preneed guarantees.

If the preneed contract is not funded by a policy of insurance, as defined by Section 83-5-5, a copy of the preneed contract shall be furnished to the contract insured at the time of purchase.

(5) If the preneed contract is funded by trust, the contract shall indicate the name, address and telephone number of the trustee; the trust institution; the amount to be paid; the frequency of payment; and the length of time payments will be paid into the trust. The contract insured must initial on the contract the percentage required to be trusted and the designation of the trust officer. In addition, the contract should clearly indicate any exclusions or limitations of the preneed contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.

(6) The preneed contract shall indicate whether it is a standard contract or an inflation proof contract. The contract shall clearly indicate which merchandise and services are guaranteed as to price.

(7) The preneed contract shall contain the address and phone number of the Secretary of State with instructions that consumer complaints may be filed with the Secretary of State.

(8) If the preneed contract is paid in multiple payments, the contract should indicate the amount, frequency and duration of the payments and the amount of any interest charged. The contract shall also include the impact on the contract if payments are not made.

(9) The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of this article and subject to the penalties provided in Section 75-63-69.

§ 75-63-56. Denial, suspension, revocation, cancelation or nonrenewal of registration; grounds; cease and desist order; freezing of disbursements from trust under exceptional circumstances.

(1) The Secretary of State may deny, suspend, revoke, cancel or nonrenew any registration on the following grounds:

(a) The applicant or registrant has failed to comply with a provision of this article or any valid rule, regulation or order that the Secretary of State has issued;

(b) The registrant has obtained its registration through misrepresentation or fraud or the applicant has attempted to obtain a registration through misrepresentation or fraud;

(c) An officer, director, manager or owner of the applicant or registrant has improperly withheld, misappropriated or converted any monies or properties received in the course of the prepaid funeral contracts business to the registrant's or applicant's own use;

(d) An officer, director, manager or owner of the registrant or applicant has been found to have committed any unfair trade practice or fraud during the course of prepaid funeral contracts business;

(e) The registrant or applicant failed to provide a written response after receipt of a written inquiry from the Secretary of State or his representative as to transactions under the registration

within fourteen (14) days after receipt thereof, unless the Secretary of State or his representative knowingly waives the timely response requirement in writing;

(f) The registrant or applicant has refused to be examined or produce any of his accounts, records or files for examination or has failed to cooperate with the Secretary of State in an investigation when requested by the Secretary of State or his representative;

(g) The registrant or applicant is indebted to the Secretary of State for any unpaid fine, penalties or fees;

(h) The registrant or applicant does not possess an active license for the practice of funeral service or a funeral director's license or licensed funeral establishment, if applicable, in good standing from the Mississippi State Board of Funeral Service; or

(i) The registrant or applicant is in violation of any of the provisions contained in the Mississippi Cemetery Law, Section 41-43-31 et seq.

(2) The Secretary of State may issue a cease and desist order, with or without a prior hearing, against the registrant, applicant, or other person or persons engaged in any prohibited act or practice directing them to cease and desist from further illegal activity, including the sale of preneed contracts, when there appears to be an immediate harm or threat of harm to consumers impacting public safety, health or welfare. If the Secretary of State finds in his order that the public health, safety or welfare imperatively requires emergency action, the Secretary of State may also summarily suspend any registration issued by him, but shall promptly hold an administrative hearing regarding the suspension or any order of cease and desist issued without a prior hearing. In those cases, the Secretary of State must convene a full hearing on the issues within ten (10) calendar days of the order of cease and desist or suspension.

(3) In exceptional circumstances where there appears an immediate harm or threat of harm to consumers due to a prohibited act or practice, the Secretary of State may issue an order to any trust officer or trust institution freezing any disbursements from a trust until the time that the Secretary of State may convene a full hearing on the matter prompting the order. In those cases, the Secretary of State shall convene a full hearing on the issues within ten (10) calendar days of the order, after which the Secretary of State may extend or lift the order.

§ 75-63-57. Record-keeping requirements.

The contract provider or its successor shall maintain in this state a copy of all preneed contracts and associated accounts, books and records for a period of the lifetime of each contract and for two (2) years after the death of a contract insured. The trustee shall maintain a copy of all trust documents for a period of the lifetime of each contract and for two (2) years after the death of a contract insured.

§ 75-63-59. Requirements for contract funded by trust.

(1) If the contract is funded by trust, the Secretary of State shall be given a copy of the trust agreement, which the Secretary of State shall review and approve in advance. The Secretary of

State may at any time require the submission of the trust agreement for review and approval from any preneed provider. The Secretary of State shall approve in advance any amendments or modifications to the trust agreement. The Secretary of State shall be informed in writing as to how the assets of the trust are held. In the event of any change in the investment composition of the trust assets, or change in the trustee or trust institution, the Secretary of State shall be informed within ten (10) days after the time the change occurs.

(2) Any trustee, other than a financial institution, shall not be the contract provider, the seller, or an officer or director of the contract provider if the contract provider is a corporation.

(3)(a) In no event may trust funds be loaned, directly or indirectly, to any of the following persons: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(b) In no event may trust funds, directly or indirectly, be invested in or with any business or business venture in which any of the following persons have an interest: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(4) Not later than the fifth day of the following month from when funds are received, the contract seller shall place in a trust account in a financial institution as defined by this article at least eighty-five percent (85%) of the funds received for funeral services and merchandise. The contract shall disclose to the purchaser in boldface type the percentage of funds the seller is required to trust along with the name of the trust officer, the trust institution, the address and phone number of the same. The purchaser shall initial the corresponding paragraph in the contract indicating notice of the trust percentage and acknowledge being provided the name of the trust officer, the trust institution, address and phone number. The contract seller must provide the trustee with documentation containing the contract owner's identity and allocable share for each remittance. Trust accounts shall be carried in the name of the preneed seller, but accounting records shall be established and maintained for each individual preneed funeral contract beneficiary showing the amounts deposited and invested. The Secretary of State may by rule address the recordkeeping required for interest, dividends, increases and accretions earned.

(5) Reasonable annual trust fees including any income taxes owed to the State of Mississippi and/or the United States Treasury may be withheld from the earnings of the trust.

(6) At the time of death, if the contract provider provides the merchandise and services indicated in the contract, the contract provider shall furnish to the trustee a copy of the preneed contract, contract owner's death certificate or proof of death, and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds, which shall not be less than the amount deposited in trust. In the limited instance only when a preneed provider furnishes a personalized,

engraved marker, headstone or monument before death, the trustee may disburse to the preneed provider compensation for the engraved marker, headstone or monument as well as any associated engraving, setting or delivery fees. In those instances, no disbursement from the trust shall be made until the trustee receives from the preneed provider a delivery ticket or invoice, documentation for the engraving of identifying information regarding the purchaser, and a letter of performance indicating that the engraved marker, headstone or monument has been provided.

Any trust officer or trust institution that releases trust funds for funeral services or merchandise in a manner contrary with the provisions of this article shall be liable for the same. Furthermore, any trustee or trust institution that engages in fraud, deceit, misrepresentation, or misappropriation of trust funds to the detriment of a contract provider or a contract insured shall be liable for the same.

(7) If a substitute provider was named by the contract beneficiary, during his life, or by one with the legal authority to act on his behalf at any time, the substitute provider shall provide the trustee with a death certificate or published obituary along with an invoice verifying that the substitute provider serviced the final needs of the beneficiary. Within ten (10) days of receipt of the documentation of death and invoice from the substitute provider, the trustee shall pay the substitute provider or the estate of the contract beneficiary not less than the amount deposited in trust on behalf of the serviced beneficiary. For all trust funded preneed contracts sold on or after July 1, 2012, the trustee shall pay the substitute provider not less than the amount deposited into trust on behalf of the serviced beneficiary in addition to all earnings, interest and income on the beneficiary's principal.

(8) Preneed trust funds are exempt from all claims of creditors of the preneed provider, except as to the claims of the contract purchaser or his representatives, and cannot be used as collateral, pledged or in any way encumbered or placed at risk.

§ 75-63-61. Requirements for contract funded by insurance.

(1) If the preneed contract is funded with insurance, and payment is made to the contract seller rather than directly to the life insurance company, the contract seller shall timely submit to the insurance company all premiums collected from the contract purchaser.

(2) At the time of death, the proceeds of the policy shall be settled in accordance with the policy. If the contract provider furnishes merchandise and services as indicated in the contract, the contract provider is entitled to retain the proceeds of the policy in accordance with the preneed contract. If the contract provider does not furnish merchandise and/or services as provided in the preneed contract, the contract provider shall pay to the estate of the contract insured or the substitute provider of the merchandise and/or services the proceeds of the policy within ten (10) days of receipt of these proceeds.

§ 75-63-63. Preneed contracts to be portable; who may name a substitute provider.

Preneed contracts entered into in this state shall be portable. The naming of a substitute provider shall be in writing by the contract beneficiary or by one who is authorized by law to act on their behalf. If the preneed contract is funded by trust, the notice of a substitute provider shall be made to the original preneed contract seller and the trustee holding funds for the beneficiary. Upon receipt of the notice of substitute provider, the original provider shall be relieved of all obligations to perform the contract including all obligations of reporting and accounting. If the preneed contract is funded by insurance, the change of beneficiary shall be made in writing to the insurance company. If for any reason insurance proceeds are paid to a preneed seller who did not furnish the final needs of the beneficiary at their time of need, the policy proceeds shall be paid in full to the substitute provider or the estate of the preneed beneficiary within ten (10) days of receipt.

§ 75-63-65. Sellers of preneed contracts required to register with Secretary of State; registration fees; regulations and registration requirements; registration forms.

- (1) Any establishment or organization that engages in the business of selling preneed merchandise and/or services shall register with the Secretary of State and shall pay a registration fee. A separate registration is required for each separate corporation or business entity. Applicants for registration shall provide the Secretary of State with any information and documents as he may require. The establishment or organization shall pay to the Secretary of State for the initial registration of the main establishment or organization a fee of Two Hundred Fifty Dollars (\$250.00). For each year thereafter, the registration fee shall be Fifty Dollars (\$50.00) per year due at the time that the annual report is required to be filed with the Secretary of State.
- (2) Any person who engages in the business of selling preneed contracts shall register with the Secretary of State and shall be subject to the rules and regulations promulgated by the Secretary of State as provided in this article.
- (3) The Secretary of State shall establish regulations to register each establishment or organization selling preneed merchandise or services. No establishment or organization shall be registered to sell preneed merchandise or services that the establishment or organization cannot lawfully provide at the time of a person's death. The Secretary of State shall also maintain a record of all individuals who are registered to sell preneed merchandise or services through the registered establishment.
- (4) The Secretary of State shall establish regulations to register each person selling preneed contracts, including the establishment through which the seller will be selling. No person shall be registered to sell preneed contracts without indicating the establishment for which he is selling. Only a registered preneed establishment can sponsor a person for registration. The preneed operator shall inform the Secretary of State of any changes with its sales agents within thirty (30) calendar days of the same.

(5) The Secretary of State shall develop and furnish the forms necessary for the registration of establishments and individuals selling preneed contracts.

§ 75-63-67. Annual written or electronic reports of preneed contract sales and of all trust fund account activity to be submitted to Secretary of State; penalty for late reports.

(1) Every preneed establishment shall annually submit a written or electronic report to the Secretary of State of its preneed contract sales and performance of those contracts. This report shall be filed on or before March 31 of each year for the calendar year ending the preceding December 31. The Secretary of State shall impose an administrative fine in the amount of One Hundred Dollars (\$100.00) per day for each day that the report is late. The administrative fine shall be in addition to any other administrative penalties provided under this article. The Secretary of State shall promulgate rules and regulations to regulate preneed contracts and the duties and responsibilities of preneed establishments; the content and filing procedure of reports; and filings of additional reports if deemed necessary by the Secretary of State to carry out the purposes of this article. The Secretary of State may assess any fines and fees necessary to carry out the provisions of this article.

(2) Every preneed trust officer or trust financial institution shall annually submit to the Secretary of State a statement of all trust fund account activity on or before March 31 of each year for the calendar year ending the preceding December 31. The statement or report shall reflect the trust balance as of December 31 for the preceding calendar year. The Secretary of State is authorized to assess a penalty against the trust institution for each day the statement is late, not to exceed Five Hundred Dollars (\$500.00) in any one (1) year.

§ 75-63-68. Conversion of trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contract upon appeal to Secretary of State; written disclosure of terms to affected preneed purchasers.

A registered preneed contract provider may convert trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contracts upon appeal to the Secretary of State. If approved, the Secretary of State shall issue an order authorizing the withdrawal of funds for the provider to purchase preneed insurance or annuity contracts. The preneed seller shall disclose in writing to all affected preneed purchasers the terms of the insurance policy or annuity contract. Except as provided in this section, no funds deposited in trust with a trustee shall be withdrawn by the trustee to purchase a preneed insurance policy or annuity contracts.

§ 75-63-69. Sanctions for violations; procedural requirements.

(1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this article or any rule or order under this article, he may, in his discretion, seek any or all of the following remedies:

(a) Issue a cease and desist order with a prior hearing against the person or persons engaged in the prohibited activities directing them to cease and desist from further illegal activity;

(b)(i) Issue an order in the case of any person, partnership or, if a corporation, the officers and directors who sell or offer to sell preneed contracts, or other person who violated this article, imposing an administrative penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any of those proceedings, to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this article or a rule promulgated under this article, or an order of the Secretary of State, the number of persons adversely affected by the conduct and the resources of the person committing the violation;

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this article or any rule or order under this article. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this article or any rule or order under this article, or the court may impose a civil penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any of those proceedings. The court may not require the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing, suspend or revoke any preneed establishment or salesperson registration for violation of statutes, regulations, or an order issued under this article.

(3) Any person, partnership or, if a corporation, the officers and directors who sell or offer to sell a preneed contract with a suspended or revoked registration shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for a term of not more than one (1) year, or both fine and imprisonment.

(4) Any person, partnership or, if a corporation, the officers and directors who embezzle or fraudulently or knowingly and willfully misapply or convert preneed funds shall, upon conviction, be punished by imprisonment in the custody of the Mississippi Department of Corrections for a term of not less than ten (10) years, or be fined not more than One Thousand Dollars (\$1,000.00) and imprisoned in the county jail not more than one (1) year, or both fine and imprisonment. Each such violation shall constitute a separate offense.

(5) Upon reasonable belief that a person or corporation is acting in violation of the portions of this article requiring fines or imprisonment, the Secretary of State shall immediately report this violation accompanied by all relevant records to the Insurance Integrity Enforcement Bureau within the Office of Attorney General created in Section 7-5-301, or to the district attorney, county or municipal attorney having jurisdiction for the same.

(6) No order shall be entered under this section without the following:

(a) An appropriate prior notice to the applicant or registrant;

(b) An opportunity for a hearing; and

(c) Written findings of fact and conclusions of law.

§ 75-63-70. Joint and several liability of preneed operator's managers, officers, directors, etc.

Upon a finding by a court of competent jurisdiction of failure to maintain or deposit in the trust account as required by this article, or of fraud, theft or misconduct by the preneed operator's managers, officers, directors or others who are personally responsible for the waste or unlawful depletion of trust funds, the managers, officers, directors or others may be jointly and severally liable for any deficiencies in the trust account as required by this article.

§ 75-63-71. Disclosure of information contained in registrations, statements, applications, and reports; confidentiality of information obtained through investigation or examination.

The information contained in or filed with any registration, statement, application or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under this act shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State, or any of his officers or employees, unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

§ 75-63-73. Examination of business or person offering preneed funeral services and merchandise; records open to inspection; subpoena power of Secretary of State.

The Secretary of State shall, as often as he deems necessary, examine the business of any person or business offering preneed funeral services and merchandise, whether or not registered in compliance with this article. Any person or business so examined shall produce, upon request, all records requested by the Secretary of State's examiners. Any trustee or trust institution for a preneed funeral trust shall disclose to the Secretary of State any information regarding preneed trust accounts maintained by the trustee.

The records in the possession of any insurance company, third-party administrator, burial association, banking or trust institution, investment services company, funeral home establishment, crematory, cemetery, or any vendor, person or entity are open to inspection to any of the Secretary of State's examiners or investigators carrying out the provisions of this article.

For the purpose of any investigation or proceeding under this article, the Secretary of State, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in the possession of any insurance company, third-party administrator, burial association, banking or trust institution, investment services company, funeral home establishment, crematory, cemetery, or any vendor, person or entity, whether located within or outside of this state, that the Secretary of State deems relevant or material to the inquiry.

§ 75-63-75. Article does not constitute authorization for unlicensed persons to sell life insurance.

Nothing in this article shall be construed to authorize the sale of life insurance policies by unlicensed insurance producers which is prohibited by Section 83-17-55, Mississippi Code of 1972.

§ 75-63-77. Change of ownership or control; verified change of ownership application; contents; approval by Secretary of State; liability of seller and buyer.

(1) The seller shall apply for change of ownership or control when:

(a) The seller transfers all or a portion of the interest in any contract for prepaid funeral merchandise or services;

(b) The seller transfers one or more of its establishments for providing funeral merchandise or services;

(c) All or a portion of the equity ownership of a seller has been transferred that will result in a change of:

(i) The sale of more than fifty percent (50%) of the interest of a seller when the seller is a corporation;

(ii) Ownership of a seller when the seller is other than a corporation;

(d) The seller transfers all of its business assets relating to providing funeral merchandise or services; or

(e) The seller terminates its business of providing funeral merchandise or services.

(2) At least fifteen (15) days before the proposed occurrence of an event described in subsection (1) of this section, the seller shall file a verified change of ownership application with the Secretary of State, which shall contain the following:

- (a) The name and address of the seller;
 - (b) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the “transferee”;
 - (c) A description of the property and of the proposed transaction, as set forth in subsection (1) of this section;
 - (d) An accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date;
 - (e) Any required documents or amendments thereto relating to the trust fund;
 - (f) A copy of any notice proposed to be sent to the contract buyers after the transfer;
 - (g) A filing fee of One Hundred Dollars (\$100.00); and
 - (h) Any other information that may reasonably be required by the Secretary of State by rule or order.
- (3) The Secretary of State must approve the change in ownership or control. The Secretary of State shall approve the seller's application for change of ownership by written authorization if:
- (a) The transferee set forth in the application holds a valid, current registration under the provisions of this article;
 - (b) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and
 - (c) All required information and documents are filed with and approved by the Secretary of State.
- (4) The Secretary of State shall have the authority by rule or order to waive or reduce any of the requirements contained in subsection (2) of this section as not being necessary or appropriate in the public interest or for the protection of the contract purchasers.
- (5) The seller, or its interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The buyer shall be liable for all funds and transactions thereafter.
- (6) Any shortages in the trust fund due to the failure to properly capitalize the trust in accordance with Section 75-63-59 shall be funded by the preneed seller or new owner before closing. Nothing provided in this section shall alleviate or excuse the purchaser from exercising due diligence in the transaction before closing.

§ 75-63-79. Procedure upon cessation of business or revocation or suspension of registration to sell preneed funeral contracts.

(1) If a preneed provider ceases to do business or the provider's license issued by the State Board of Funeral Service is revoked or suspended or the registration to sell preneed funeral contracts is revoked or lapsed and application for a replacement registration has not been filed, the provider shall within thirty (30) days submit to the Secretary of State a complete listing of names and addresses of all active contracts. The provider shall also notify all contract purchasers in writing that their contracts are to be transferred to another registered provider of the purchaser's choice. The Secretary of State shall review and approve the form of the notice. The transferor shall then transfer the contracts and notify the Secretary of State of the providers selected within sixty (60) days of the termination of the preneed registration. All contracts funded by burial insurance or trust funds together with interest are to be transferred. The selling provider forfeits its right to any monies it otherwise would be entitled. If the provider fails to provide for the transfer of contracts within sixty (60) days, the purchasers may directly request the trust officer to transfer the account balance to another provider selected by the purchaser. The purchaser may also request that an insurance company assign another provider as beneficiary for the insurance policy.

(2) The Secretary of State has jurisdiction over the provider and the burial insurance policy or trust funds together with interest of all active contracts, and has the authority to accomplish the necessary transfer of preneed funeral contracts and trust funds in all cases in which the terminating provider has failed to effectuate the transfer to a registered provider within four (4) months of the date the provider's license issued by the State Board of Funeral Service was cancelled or the registration to sell preneed funeral contracts was terminated.

§ 75-63-81. Preneed Contracts Loss Recovery Fund; creation, purpose, administration, loss recovery fee, reimbursement for claims; prohibition against use of existence of fund for sales, solicitation, or inducement to purchase contract; Preneed Contracts Loss Recovery Association; directors, appointment, compensation; appeals.

(1) There is established a Preneed Contracts Loss Recovery Fund, hereinafter referred to as the "fund," to be administered by directors of the Preneed Contracts Loss Recovery Association, hereinafter referred to as the "association." Directors are to be appointed by the Secretary of State. The purpose of the fund is to reimburse the estates, or in the absence of an estate filing, the purchaser or applicant with payment jointly to the funeral home providing services or merchandise or both, of beneficiaries of preneed funeral contracts who have suffered financial loss as a result of the misfeasance, fraud, default, failure or insolvency of a registered Mississippi preneed provider.

(2) The fund shall be funded from a charge not to exceed Ten Dollars (\$10.00) to be added to the cost of every preneed contract sold from and after July 1, 2009; however, if the preneed contract is funded solely with insurance that is protected by the Mississippi Life and Health Insurance Guaranty Association, then that fee shall not be charged. The association may reduce, suspend or resume collection of the fee at any time and for any period to ensure that a sufficient

amount is available to meet anticipated disbursements and to maintain an adequate reserve consistent with actuarial guidance.

The per-contract fees shall be remitted quarterly to the association for each quarter of the calendar year with a quarterly fee form as prescribed by the Secretary of State. The per-contract fee is not subject to the trusting requirements of Section 75-63-59. The fees shall be remitted to the association no later than fifteen (15) days after each quarter. Absent the Secretary of State's approval of an extension for good cause shown, preneed providers failing to timely report and remit the per-contract fee to the association may be subject to a penalty of One Hundred Dollars (\$100.00) per day for each day of delinquency, payable to the fund.

(3) All sums received by the association shall be held in a separate account maintained by the State Treasurer to be used solely as provided in this article. Warrants to the fund may only be issued by the Department of Finance and Administration upon request by a majority vote of the directors of the Preneed Contracts Loss Recovery Association. All interest or other income earned on the fund shall be retained by the fund.

(4) Reimbursements from the fund must not exceed the total payment made for preneed funeral services or merchandise, cemetery services or merchandise, or both. No current insurance benefits or future graduated insurance benefits may be reimbursed, including any current or future graduated insurance benefits in any insurance company insolvency guaranty fund association. Upon the death of the beneficiary and the applicant's compliance with all applicable rules of the association, reimbursement from the fund may be made to the estate of the beneficiary, the purchaser or applicant with payment jointly to the funeral home or cemetery providing services or merchandise or both, only to the extent to which losses are not bonded or otherwise covered. If the association makes payments from the fund under this section, the association is subrogated in the reimbursed amount and may bring an action against any person or entity, including a preneed provider. The association may enforce claims it may have for restitution or otherwise and may employ and compensate from the fund consultants, legal counsel, accountants and other persons it considers appropriate to assure compliance with this section.

(5) The association shall investigate all applications made and may reject or allow claims in whole or in part. Payment may be made only to the extent that monies are available in the fund, and payments may be prorated among claimants. Reimbursements for completed claims must be processed subject to availability of monies in the fund. The association has complete discretion to determine the order and manner of payment of approved applications. The association may approve one (1) application, in whole or in part, that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of an insolvent registrant as part of a plan to arrange for another registrant to assume the obligations of the licensee being liquidated if the association finds that the plan is reasonable and is in the best interests of the contract beneficiaries. All payments are a matter of privilege and not a right, and no person has a right in the fund as a third-party beneficiary or otherwise.

(6) The association shall develop a form of application for reimbursement.

(7) This fund and all interest earned may be used only as prescribed in this section and may not be used for any other purposes to the extent losses are not bonded, insured, or otherwise covered, protected or reimbursed. Further, all monies deposited into the fund shall not be subject to any deduction, tax, judgment lien, levy, or any other type of assessment except as may be provided in this article. The association may expend monies from the fund to:

(a) Make reimbursements on approved applications;

(b) Purchase insurance to cover losses and association liability as considered appropriate by the directors and not inconsistent with the purpose of the fund;

(c) Invest portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under state law;

(d) Pay the expenses of the association for administering the fund, including employment of legal counsel, accountants, consultants and other persons the board considers necessary to assure compliance with this section.

(8) No person may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster or over any radio station or television station, or in any other way, any advertisement, announcement, or statement that uses the existence of the fund for the purpose of sales, solicitation or inducement to purchase any form of preneed contract covered under this article.

(9) The Secretary of State may establish rules and regulations necessary to implement the purposes of the section including, but not limited to, rules governing the association's operations, claim procedures, determination of solvency or insolvency of a preneed provider, claimant eligibility and determination of appropriate loss payee.

(10) No purchaser or representative of a purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected for this association to satisfy any judgment or economic loss of the purchaser from a prepaid funeral or cemetery organization except for the purposes of this section. This fund is established for the discretionary relief of purchasers and their representatives of prepaid funeral or cemetery contracts from insolvent prepaid funeral or cemetery organizations or prepaid funeral businesses with severe trust fund account shortages as determined by the directors. Coverage is limited to the claimant's actual contract payments made. There shall be no fund coverage for additional economic damages, attorney's fees, recovery costs, interest, other equitable relief or noneconomic damages.

Further, no claimant shall be eligible for compensation from the fund unless the contract purchaser for whom a claim is asserted paid to the preneed provider the loss recovery fee required by subsection (2) of this section. The fund shall have no liability for preneed contracts sold or claims that occurred or accrued before July 1, 2009.

(11) There shall be no liability on the part of and no cause of action of any nature shall arise against any director of the association, the Secretary of State, his representatives, agents or employees for any act or omission by them in the performance of their powers and duties under this article, or in its administration, dispensation, handling or collection of funds for the program.

(12) Directors of the association shall be appointed by the Secretary of State and shall consist of no fewer than five (5), one (1) from each of the Mississippi Supreme Court Districts and two (2) from the state at large. In making director appointments the Secretary of State shall consider, among other things, whether all association members are fairly represented. At least three (3) of the directors must possess five (5) years or more experience in the preneed funeral service and merchandise business as an owner or manager. All directors shall be appointed for staggered six-year terms, with the exception of the initial terms of service for the original five (5) directors. The Secretary of State may appoint any director to a successive six-year term. The initial term of service for all directors shall begin on October 1, 2009, with the initial term of two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2011, and two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2013. The initial term for the remaining director to be determined by the Secretary of State at appointment shall expire on September 30, 2015.

(13) Compensation for a director may be paid from the fund, and compensation is limited to Fifty Dollars (\$50.00) per day only for each travel day and meeting day designated by the Secretary of State in addition to a per diem amount designed to compensate directors for reasonable meal allowances, travel and lodging expenses, if needed, to attend meetings of the association directors.

(14) The association and its directors shall assist the Secretary of State and be subject to the applicable provisions of the laws of this state. The association shall be subject to examination and regulation by the Secretary of State. The association by its directors shall prepare and submit to the Secretary of State each year, not later than March 1 of each year, a financial report in a form approved by the Secretary of State and a report of activities during the preceding calendar year.

(15) Appeal rights for claim decisions issued by the association directors exist in the chancery court in this state in which an estate has been open for probate by the representative of the claimant; the chancery court in the county in which the preneed contract was purchased; or the chancery court in this state of the claimant's or decedent's home county. A notice of appeal must be filed within thirty (30) days of the association's written order denying the claim in whole or in part, and appeal to chancery court is limited to a review of the record made before the association's directors on a substantial evidence evidentiary standard.